



[Billing Code: 6750-01S]

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084-AB15

Energy Labeling Rule

AGENCY: Federal Trade Commission (“FTC” or “Commission”).

ACTION: Final rule.

SUMMARY: The Commission issues final amendments to expand coverage of the Lighting Facts label, require room air conditioner labels on packaging instead of the units themselves, enhance the durability of appliance labels, and improve plumbing disclosure requirements. This Notice completes the Commission’s recent regulatory review of the Energy Labeling Rule.

DATES: The amendments published in this document are effective on December 2, 2015, except for the amendments to § 305.11, which become effective November 2, 2016, and §§ 305.3(z), 305.8, 305.15, 305.20, and Appendix L, which become effective November 2, 2017.

ADDRESSES: Relevant portions of this proceeding, including this document, are available at <http://www.ftc.gov>.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, (202) 326-2889, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission issued the Energy Labeling Rule (“Rule”) in 1979,¹ pursuant to the Energy Policy and Conservation Act of 1975 (EPCA).² The Rule requires energy labeling for major home appliances and other consumer products to help consumers compare competing models. When first published, the Rule applied to eight product categories: refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, and furnaces. The Commission subsequently expanded the Rule’s coverage to include central air conditioners, heat pumps, plumbing products, lighting products, ceiling fans, and televisions.³

The Rule requires manufacturers to attach yellow EnergyGuide labels for many of the covered products and prohibits retailers from removing the labels or rendering them illegible. In addition, the Rule directs sellers, including retailers, to post label information on websites and in paper catalogs from which consumers can order products. EnergyGuide labels for covered products contain three key disclosures: estimated annual energy cost (for most products); a product’s energy consumption or energy efficiency rating as determined from Department of Energy (DOE) test procedures; and a comparability range displaying the highest and lowest energy costs or efficiency ratings for all similar models. For energy cost calculations, the Rule specifies national average costs for applicable energy sources (*e.g.*, electricity, natural gas, oil) as calculated by DOE. The Rule sets a five-year schedule for updating comparability range and

¹ 44 FR 66466 (Nov. 19, 1979) (Rule’s initial promulgation).

² 42 U.S.C. 6294. EPCA also requires the DOE to develop test procedures that measure how much energy appliances use and to determine the representative average cost a consumer pays for different types of energy.

³ See 52 FR 46888 (Dec. 10, 1987) (central air conditioners and heat pumps); 54 FR 28031 (July 5, 1989) (fluorescent lamp ballasts); 58 FR 54955 (Oct. 25, 1993) (certain plumbing products); 59 FR 25176 (May 13, 1994) (lighting products); 59 FR 49556 (Sep. 28, 1994) (pool heaters); 71 FR 78057 (Dec. 26, 2006) (ceiling fans); 76 FR 1038 (Jan. 6, 2011) (televisions).

annual energy cost information.⁴ The Commission updates the range information based on manufacturer data submitted pursuant to the Rule’s reporting requirements.

II. Regulatory Review

In a March 15, 2012 Federal Register Notice (77 FR 15298) (“Notice of Proposed Rulemaking” or “NPRM”), the Commission initiated a review of the Energy Labeling Rule seeking comment on several proposed improvements to the FTC’s labeling requirements. The Commission completed the first stage of the regulatory review on January 10, 2013, by issuing final amendments to streamline data reporting and improve online disclosures as proposed in the March 2012 NPRM. On July 23, 2013 (78 FR 43974), the Commission followed those improvements with new labels to help consumers comparison shop for refrigerators and clothes washers after the implementation of upcoming changes to the Department of Energy (DOE) test procedures, as well as updates to the Rule’s comparability ranges.

III. Final Regulatory Review Issues

On June 18, 2014 (79 FR 34642), the Commission published a Supplemental Notice of Proposed Rulemaking (SNPRM) seeking comments on a broad array of issues raised over the course of the review proceeding and proposing related amendments.⁵ These issues include

⁴ 16 CFR 305.10.

⁵ The comments received in response to the SNPRM are here: <https://www.ftc.gov/policy/public-comments/initiative-569>. The comments included: Air-Conditioning, Heating, and Refrigeration Institute (#00016); Alliance Laundry Systems LLC (#00010); Amazon (#00005); American Lighting Association (#00009); American Gas Association (#00013); American Public Gas Association (#00012); Association of Home Appliance Manufacturers (#00014); Direct Marketing Association (#00007); Earthjustice (“Joint Commenters”) (#00017); Energy Solutions (#00018); Glickman (#00002); Goodman Global, Inc. (#00008); Laclede Gas (#00011); National Electrical Manufacturers Association (#00006); Nicholas (#00003); Plumbing Manufacturers International (#00004); Republic of Korea

expanded light bulb label coverage, an online label database, more durable labels for appliances, room and portable air conditioner box labels, ceiling fan labels, consolidated refrigerator ranges, updates to furnace labels, QR (“Quick Response”) Codes, television label updates, a range revision schedule, retailer responsibility, marketplace websites, set-top box labeling, clothes dryer labels, and plumbing products. Following the 2014 Notice, the Commission issued a final rule on December 29, 2014, related to heating and cooling equipment labels and a separate December 31, 2014 Notice seeking comment on labels for miscellaneous refrigerator products in response to recent test procedures proposed by DOE.⁶ The Commission also published updated comparability ranges for television labels on March 27, 2015 (80 FR 16259).

In the present Notice, the Commission concludes the regulatory review by issuing final amendments for expanded light bulb labeling, improvements to appliance and room air conditioner labels, and updates to plumbing requirements. In a separate Notice, the Commission proposes several amendments on issues that have arisen recently or require additional consideration, including a new online database, revised central air conditioner labels, refrigerator ranges, new ceiling fan labels, and revised labels for heating and cooling equipment in response to recent DOE efforts.

A. Expanded Light Bulb Labeling

Background: In the 2014 SNPRM (79 FR at 34643), the Commission proposed to expand the Lighting Facts label coverage to decorative and other specialty bulbs that have energy use and light output similar to general service bulbs already labeled under the Rule. For general

(#00019); and Whirlpool Corporation (#00015).

⁶ 79 FR 77868 (Dec. 29, 2014); 79 FR 78736 (Dec. 31, 2014).

service light bulbs,⁷ the Commission issued a new Lighting Facts labels in 2010 (75 FR 41696 (July 19, 2010)) that disclose information about the bulb's brightness, estimated annual energy cost, life, color appearance, and energy use.⁸ The requirements for these new labels cover most general service medium screw base incandescent, compact fluorescent, and LED (light-emitting diode) bulbs.⁹ The current Rule excludes several other consumer bulbs, such as decorative bulbs (*e.g.*, globe and bent-tip decorative bulbs rated 40 watts or fewer), non-medium screw base bulbs, shatter resistant bulbs, and vibration service bulbs.¹⁰

The 2014 SNPRM sought comment on labeling for specialty bulb types with energy use or light output similar to the general service bulbs already covered by the Lighting Facts label. The proposal set specific wattage and light output thresholds and excluded bulbs with shapes or uses not generally sought by typical consumers (*e.g.*, mine service bulbs). It included special marking provisions for some bulbs and an abbreviated, single-label option for smaller packages often used for specialty bulbs. The proposal allowed manufacturers to use the Lighting Facts

⁷ This document uses the terms lamp, light bulb, and bulb interchangeably. The Rule's definition of "general service lamp" in section 305.3(l) is consistent with EPCA's definition (42 U.S.C. 6291), except for the addition of two lamp categories (reflector lamps and three-way bulbs) excluded by the statute. *See* 75 FR 41696, 41698, n. 13 (Jul. 19, 2010) (explaining the Commission's decision to include these categories under the labeling requirements).

⁸ 16 CFR 305.15(b). The Energy Independence and Security Act of 2007 (EISA) directed the Commission to examine existing light bulb labeling requirements. Pub. L. 110-140; *see* 42 U.S.C. 6294(a)(2)(D)(iii). EISA amended the Energy Policy and Conservation Act (EPCA) (42 U.S.C. 6291 *et seq.*).

⁹ 16 CFR 305.3(l).

¹⁰ 16 CFR 305.3(l)(2), (n)(3)(ii). In 2011, the Commission proposed to expand the labeling coverage by including a broad array of additional bulb shapes generally available to consumers. 76 FR 45715 (Aug. 1, 2011). In response to comments received on that earlier Notice, the Commission revised its proposal in the 2014 Notice to focus coverage on specialty bulb types with energy use or light output similar to general service bulbs already covered by the Lighting Facts label. 79 FR at 34644.

label for consumer light bulbs not covered by the proposed requirements, if they follow the Rule's content and format requirements. Finally, to avoid confusion, the Commission proposed implementing the expanded coverage by adding the term "specialty consumer lamp" to the Rule instead of amending the Rule's definition of "general service lamp."

Comments: The comments generally supported the SNPRM proposal. However, as discussed below, the comments offered suggestions about the scope of the proposal's coverage, test requirements, the label's location and size for smaller packages, and the compliance period. Commenters also raised issues about existing requirements.

Benefits: The comments described several benefits the new label coverage provides to consumers. The Joint Commenters (several energy efficiency groups commenting together) and the California Utilities explained that the presence of uniform disclosures for brightness, operating cost, and lifetime information on additional products will enable consumers to quickly compare the growing number of specialty consumer lamps to competing general service lamps in the marketplace.¹¹ They also noted the proposed lower wattage limit (30 watts) will ensure consumers receive accurate information about many lamps outside the scope of existing federal efficiency standards.

Coverage: Although the comments generally supported the proposal, they provided different views on the scope of the proposed coverage. The Joint Commenters repeated their earlier recommendation that the FTC require labels for all screw-based lamp products, not just the most common bulb shapes or socket fittings. In their view, consumers will benefit

¹¹ According to DOE information cited by the Joint Commenters, the combined shipments of incandescent lamp types covered under the proposal have increased from 16.6 million units in

significantly from access to the Lighting Facts labels, even where the market for a particular lamp is small because high efficiency lighting technology is widely available.

The National Electrical Manufacturers Association (NEMA) supported the proposed labeling for most lamps under the proposed coverage,¹² but urged the Commission to exclude two proposed categories: intermediate screw base lamps and plant light lamps. NEMA argued that intermediate screw base lamp labeling would yield little consumer benefit because these products have very low sales volume, are often colored (*e.g.*, red, green, etc.), and typically use only incandescent technology. Thus, in NEMA's view, labeling these lamps would not serve EPCA's directive to consider labeling changes "to help consumers understand lamp alternatives" because there are "no meaningful lamp alternatives."¹³ In addition, because wattage information routinely appears on these packages, consumers already receive adequate energy information to make informed choices.¹⁴ NEMA also urged the Commission to exclude plant light lamps, explaining that consumers do not generally use these bulbs for standard lighting applications due to their unique color spectrum. Also, in NEMA's view, given their low lumen output, these bulbs are not suitable for general illumination.

Label Size: NEMA also raised concerns about whether the proposed special label for small packages would fit on certain small packages for specialty bulbs, particularly blister packs,

2010 to more than 18 million units in 2013.

¹² NEMA noted that labels for vibration service, rough service, appliance and shatter resistant lamps "may inform a residential user of the lumen and life differences of vibration service, rough service, appliance and shatter resistant lamps, and this information may have some value for the consumer."

¹³ *Citing* 42 U.S.C. 6294(a)(2)(D)(iii)(II).

¹⁴ NEMA also noted that EPCA prohibits screw base adapters that would make these usable in medium screw base applications (*see* 42 U.S.C. 6302(a)(6)), so there is no potential loophole for

which often comprise a single piece of cardboard covered largely by the bulbs themselves. It recommended a provision allowing the required label on the back of these packages, with a brief reference to the label on the front. Alternatively, NEMA suggested that the Rule allow an 80% reduction in the label's size, similar to food labeling requirements. It also noted that, given the small size of candelabra bases, the 8-point FTC mercury disclosure ("Mercury disposal: epa.gov/cfl") may not fit, and therefore urged alternatives such as a 5-point disclosure, a shortened disclosure, or the use of the mercury symbol only (encircled Hg) on the bulb's base.

Testing: The comments also provided suggestions about testing. Because DOE generally does not require test procedures for the bulbs covered by these amendments, the Rule's basic substantiation provision would apply.¹⁵ The California Utilities noted the need to test newly-covered lamps will not pose significant burden because manufacturers already test these bulbs under industry-developed procedures and often display the relevant metrics on packages. However, the Joint Commenters argued that the absence of specific testing and reporting requirements raises concerns about the accuracy of label content. To address this concern, they recommended two measures to help ensure consumers have access to accurate information. First, they urged the Commission to consider applying current DOE test procedures for general service lamps to the new specialty category. Second, they recommended that the Commission

these lamps to substitute for general service lamps.

¹⁵ See 16 CFR 305.5(b) ("For any representations required by this part but not subject to Department of Energy requirements and not otherwise specified in this section, manufacturers and private labelers of any covered product must possess and rely upon a reasonable basis consisting of competent and reliable scientific tests and procedures substantiating the representation.").

require manufacturers to submit their labels through DOE’s Compliance Certification and Management System (“CCMS”) website.

Compliance Period: The comments also addressed the timing of the new label requirements. The Joint Commenters recommended an effective date of one year. They argued that, because the label information is routinely included in catalogs for specialty consumer lamps, significant testing will not likely be necessary for the new labels. Likewise, package redesign should not consume significant time because many manufacturers have already applied the Lighting Facts label to these lamps. These commenters also explained that an extended lead time would be inconsistent with EPCA deadlines for similar products in the past (*e.g.*, one year for general service lamps) and past FTC deadlines (*e.g.*, 18 months for Lighting Facts labels in announced in 2011). To the extent FTC determines that manufacturers need additional time, the Joint Commenters urged the Commission to consider a phased approach that gives priority to labeling specialty consumer lamp types with the highest sales volume and the greatest aggregate energy consumption.¹⁶

Color Appearance: The Joint Commenters urged the Commission to require color ink on the label’s “light appearance” bar, which depicts whether the bulb has a warm or cool appearance. They pointed to a recent Consumer Reports poll indicating that only 23% of respondents found the warm to cool scale helpful and argued that a color scale would be more

¹⁶ The Joint Commenters also urged the Commission to clarify that the Rule’s catalogue requirements (section 305.20) apply to specialty consumer lamps the same as general service lamps and repeated their earlier request for guidance on claims related to the “watt equivalency” of a bulb’s light output (*e.g.*, “60-watt equivalent”). The Joint Commenters also identified a misnumbered paragraph in the Rule language in section 305.15. This has been corrected in the final language. The amendments also contain conforming changes to provisions for bulk

meaningful. The Joint Commenters also noted that a dozen light bulbs recently tested by Consumer Reports all featured color ink somewhere on the package. In addition, a few manufacturers already provide a color graphic to communicate color temperature in addition to the black and white Lighting Facts label.

Discussion: Consistent with the proposal in the SNPRM, the final rule requires Lighting Facts labels for specialty consumer bulbs with energy use or light output similar to the general service bulbs already covered by the Lighting Facts label. As discussed below, the final requirements differ from the proposal because they do not cover intermediate screw base lamps and plant light lamps and allow the label on the back of small blister packs for specialty bulbs.¹⁷ Manufacturers will have two years to phase in the new requirements. Online retailers and paper catalog sellers will have six months to post the new labels after these requirements become effective.¹⁸

The final rule sets specific thresholds for wattage and light output for covered bulbs and excludes certain bulbs for which labeling is not likely to provide substantial consumer benefit. The new rule includes special marking provisions for some bulbs and provides a smaller, single-label option for smaller packages. For consumer bulbs not covered by the requirements,

packaging and cost representations in section 305.15(f)(5)&(6).

¹⁷ Consistent with SNPRM, the final rule does not alter the Rule's current definition of "general service lamp." However, the Commission has changed to the definition of "fluorescent lamp ballast" to conform with an updated DOE definition for those products. See 76 FR 70548 (Nov. 14, 2011).

¹⁸ The final rule language also clarifies that the catalog provisions of the Rule in section 305.20 apply to specialty consumer lamp labels. The 2014 SNPRM discussed such requirements but did not contain amendatory language. See 79 FR at 34661.

manufacturers may use the Lighting Facts label if they follow the Rule’s content and format requirements.

The new requirements are consistent with EPCA’s directive to develop labels that help consumers with their purchasing decisions.¹⁹ Under EPCA, the Commission can require labeling for any consumer product if such labeling is “likely to assist consumers in making purchasing decisions.”²⁰ Therefore, the Commission may look beyond EPCA’s specific lamp definitions, which generally cover products subject to DOE’s efficiency standards.²¹ Indeed, EPCA directed FTC to issue labeling requirements that “enable consumers to select the most energy efficient lamps which meet their needs.”²² In addition, without specifying bulb coverage, the 2007 EPCA amendments encouraged the Commission to revise labels to help consumers “understand new high-efficiency lamp products” and allow them to choose products that meet their needs for light output, light quality, and lamp lifetime.²³

The Commission addresses the following specific issues raised during the proceeding: product coverage, exclusions, package size, product markings, testing, voluntary labeling, compliance period, watt-equivalence claims, and color appearance.

Coverage: The final rule covers lamp types with wattages and light output similar to currently covered general service bulbs. Specifically, the final rule defines “specialty consumer

¹⁹ 42 U.S.C. 6294(a)(2)(D), (a)(6).

²⁰ 42 U.S.C. 6294(a)(6).

²¹ 42 U.S.C. 6291(30), 6292(a)(14). Recognizing that labeling may be appropriate for some products even in the absence of an efficiency standard, the Commission has already used this general authority to cover three-way incandescent bulbs and high-efficiency LED bulbs. *See* 75 FR at 41698.

²² 42 U.S.C. 6294(a)(2)(D)(i).

²³ 42 U.S.C. 6294(a)(2)(D)(iii). The statute also directs the Commission to consider additional

lamp” to cover bulbs that: 1) are rated at 30 watts or higher or produce 310 lumens or more; 2) have a medium, candelabra, GU-10, or GU-24 base; and 3) do not meet the “general service lamp” definition.²⁴ The 30-watt and 310-lumen thresholds are consistent with Congressionally-established benchmarks set by EPCA’s definition of “general service lamps.”²⁵ Finally, the Rule covers specialty bulbs that look and operate like traditional incandescent bulbs, but are currently excluded from coverage, such as vibration-service lamps, rough service lamps, appliance lamps, and shatter resistant lamps (including a shatter proof lamp and a shatter protected lamp).

The final rule meets the statute’s directive to provide labels that will assist consumers in purchasing the most efficient bulbs among common bulb types on store shelves. Specifically, the new labels will provide a means for consumers to compare the energy use, brightness, and other attributes of commonly available bulb types and technologies that are likely to appear side-by-side on store shelves with general service bulbs. The record suggests that the newly-covered bulbs have a significant market presence, are available in models that have light output or energy use ratings similar to general service bulbs, and often come in different technologies (with their different energy costs).²⁶ By tailoring the new coverage to bulbs that have light output and

labeling changes to help consumers understand light bulb alternatives. *Id.*

²⁴ On December 9, 2013 (78 FR 73737), DOE initiated a proceeding to consider whether to expand the current definition of “general service lamp.” The Commission will seek to ensure future labeling amendments harmonize with amended DOE definitions.

²⁵ See 42 U.S.C. 6291(30)(C)-(D). Consistent with the statute, the coverage includes upper limits of 199 watts and 2,600 lumens.

²⁶ As discussed in the SNPRM (79 FR at 34645, n. 31), the principal bulb types newly covered by these amendments have the following attributes:

A-shape:— often available in medium bases; used in residential applications, including ceiling fans; used for incandescent rough service and shatter proof bulbs at high wattages;

B-shape:—decorative “torpedo” shaped bulbs used in residential applications; available in CFL and LED versions; previous NEMA comments suggest that 40-watt or fewer B-shape

energy use similar to general service lamps, the balance of consumer benefits and industry burdens created by the new labels should be the same or similar to that provided by existing labels. Though some commenters suggested a much broader coverage, it does not appear that there would be a significant benefit to consumers from labeling these products given their limited availability for typical consumers, their specialized applications, or their relatively low light output and energy use.

Exclusions: The final rule excludes bulbs for which labeling is not likely to provide substantial consumer benefit. These final exclusions include: intermediate screw-based lamps, plant light lamps, black light lamps, bug lamps, colored lamps, infrared lamps, left-hand thread lamps, marine lamps, marine signal service lamps, mine service lamps, sign service lamps, silver bowl lamps, showcase lamps, traffic signal lamps, G-shape lamps with diameter of 5 inches or more, and C7, M-14, P, RP, S, and T-shape lamps.²⁷ These bulbs do not share the basic attributes of general service lamps currently covered by the label (*i.e.*, they generally use fewer than 30 watts, produce low light output, have little market presence, or mostly appear in commercial applications). The final rule also excludes intermediate screw base bulbs and plant

lamps account for about 7% of the incandescent market;

BA and CA shape:—bent tip decorative lamps used in residential settings; available with medium and candelabra bases; wattages as high as 60; available in incandescent and LED versions; represents between 6–7% of the incandescent market according to NEMA comments;

F-Shape:—decorative flame-shaped bulb; use as much as 40 watts; available in CFL and LED versions;

G-Shape:—often used in residential bathrooms; available in CFL and LED versions; according to comments, G16 1/2 lamps represent 2.5% of the incandescent market, G25 lamps represent 5%, and G30 lamps represent about 0.5%; and

Spiral shape:—commonly used for CFLs with intermediate screw bases and GU–24 pin-based bulbs; increasingly used in new construction.

²⁷ See section 305.3(z)(3) (final amendments).

light bulbs because they have little market presence according to the comments. Thus, labeling is unlikely to assist consumers in purchasing decisions. Should new information in the future suggest that these exclusions are no longer appropriate, the Commission may reconsider the coverage.

Package Size: Consistent with the proposal, the new requirements allow manufacturers to use a smaller, single label option on the front of small packages for certain specialty bulbs.²⁸ Because packaging for some specialty bulbs consists of a blister pack on a small, single-sided card, the double-panel labeling under the current rules may not be feasible. The smaller label discloses lumens, energy cost, and bulb life, but not watts and light appearance.²⁹ In addition, this smaller label does not apply to certain large bulbs in the specialty category, such as vibration-service lamps, that resemble traditional general service lamps in size and function and thus are likely to have packaging similar to general service bulbs.

In response to comments about small specialty bulb packages, the final rule also contains a special provision for very small blister packs that cannot accommodate the required label on the front. The final rule states that, if the required disclosures (*i.e.*, either the abbreviated specialty bulb disclosure or the standard general service lamp label) would not be legible on the front of a single-card blister package due to its size, the manufacturer may use a smaller label that says “See Back for Lighting Facts” and include the full Lighting Facts label on the package rear. This

²⁸ This option does not apply to vibration-service lamps, rough service lamps, appliance lamps, and shatter resistant lamps. 305.15(c)(2) (final amendments).

²⁹ Consistent with the proposal, the new, smaller labels do not require wattage and light appearance because specialty bulbs are less likely to have high wattage ratings and because color appearance is not essential to understanding the bulbs’ energy efficiency. Nothing in the amendments, however, prohibits manufacturers from using the full Lighting Facts label or from

exception should accommodate manufacturers’ practical needs, while still providing information important information to consumers.

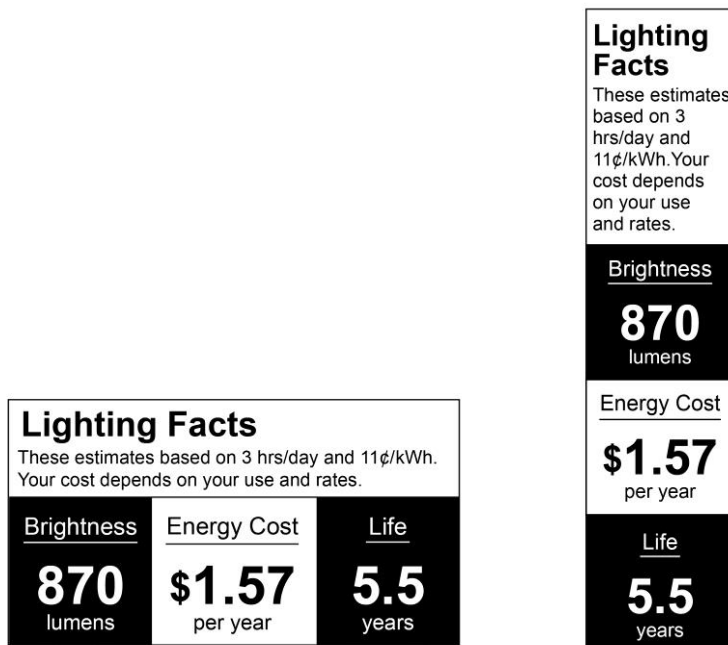


Figure 1 – Single-Panel Label Option for Specialty Consumer Bulbs



Figure 2 – Front Label Option for Specialty Consumer Bulbs Contained in Small Two-Sided Packages

Product Marking: In addition to the labeling requirements, the amendments require marking on certain bulb shapes (*i.e.*, the lumen and mercury marking currently required for general service lamps).³⁰ For vibration-service, rough service, and shatter resistant lamps, the final rule requires the same markings (*i.e.*, lumens and mercury) that currently apply to general

otherwise providing such information elsewhere on the package.

service lamps because the size and shape of these bulbs is similar. Consistent with this proposal, the amendments do not require lumen markings on the lamps themselves for decorative size bulbs, such as B, BA, F, and G-shapes, to avoid detracting from those products' appearance. However, the Rule does require mercury disclosures on the lamps to ensure consumers have access to such information for cleanup and disposal.³¹

Testing and Reporting: The final rule does not alter the Rule's existing test procedure and reporting requirements. Under the current requirements, manufacturers (or private labelers) must use applicable DOE test procedures.³² If there is no such procedure for a particular lamp, the Rule requires manufacturers to possess and rely upon a reasonable basis consisting of competent and reliable scientific tests and procedures substantiating the representation.³³ As indicated in the comments, manufacturers already use industry-developed standards published by the Illuminating Engineering Society (IES) as part of their Lighting Measurement (LM) series for testing these products. In the past, the Commission has identified IES procedures as competent

³⁰ 16 CFR 305.15(c)(2)(iii) (final amendments).

³¹ Because mercury disclosures generally apply only to compact fluorescent bulbs, which include a ballast, manufacturers should be able to place such information on the ballast in most cases, where other information is commonly printed. Industry comments raised concerns about fitting the mercury disclosure on some specialty lamps. Manufacturers that cannot physically fit the required mercury disclosure on their bulbs can petition the Commission for an alternative approach.

³² See 16 CFR 305.5.

³³ 16 CFR 305.5(b). FTC case law generally defines "competent and reliable scientific" evidence to include "tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results." See, e.g., *In the Matter of Schering Corp.*, 118 F.T.C. 1030, 1127 (1994).

and reliable tests for covered light bulbs.³⁴ The Commission expects that manufacturers will continue to use the IES tests for bulbs covered in these new labeling amendments. Accordingly, the Commission sees no need to require the IES tests in the Rule, particularly if DOE expands its test procedures to cover more of these products.³⁵ Manufacturers that fail to use competent and reliable tests generally accepted by experts in this field may be subject to enforcement action for deceptive claims.³⁶

Voluntary Labeling For Non-Covered Products: For bulbs not covered by the proposal (*e.g.*, consumer bulbs rated below 30 watts and below 310 lumens), the amendments allow, but do not require, manufacturers to use the Lighting Facts label.³⁷ However, all voluntary Lighting Facts labels must follow the Rule’s content and formatting requirements to ensure the label’s consistency across products.³⁸ Whether manufacturers use the Lighting Facts label or not, the

³⁴ See 59 FR 25176, 25208 (May 13, 1994).

³⁵ See, *e.g.*, “Preliminary Technical Support Document: Energy Efficiency Program for Consumer Products and Commercial and Industrial Equipment: General Service Lamps” (Chapter 3), DOE, Dec. 1, 2014 at <http://www.regulations.gov/#!documentDetail;D=EERE-2013-BT-STD-0051-0022> (discussing DOE plans for lighting program).

³⁶ Because DOE has no comprehensive testing requirements at this time for “specialty” bulbs covered by the new labeling proposal, the amendments, consistent with EPCA, contain no new reporting. 42 U.S.C. 6296(b)(4). If DOE develops and requires new test procedures for these newly-labeled products, EPCA requires manufacturers to begin using such tests for labeling and any other energy representations 180 days after DOE issuance. 42 U.S.C. 6293(c). In a separate Notice, the Commission will consider whether to require manufacturers to submit links to their online labels as part of the Rule’s reporting requirements.

³⁷ See 16 CFR 305.15(d). The catalog disclosure requirements in section 305.20 apply only to products required to bear a Lighting Facts label (or other required disclosure).

³⁸ The FTC staff has observed that the Lighting Facts label already appears widely on products that fall beyond the Rule’s current coverage for general service lamps.

FTC Act's general prohibition against deceptive claims requires manufacturers to substantiate any light bulb claims they make with competent and reliable scientific evidence.³⁹

Watt-Equivalency Claims: The Commission addressed the issue of equivalency claims in an earlier Notice (75 FR 41696, 41701 (July 19, 2010)) and has not altered that guidance. In essence, to avoid deception, manufacturers must ensure they can substantiate their watt-equivalence claims. Such substantiation must take into account brightness, as well as other material factors, such as color. In doing so, the ENERGY STAR watt-equivalence standards provide an important benchmark. Indeed, manufacturers making watt-equivalence claims that stray from the ENERGY STAR standard must possess another competent and reliable basis to substantiate their claims. Moreover, manufacturers that make watt-equivalence claims for bulbs with lower lumen ratings than those prescribed in the ENERGY STAR standards should consider whether they need to qualify their claims to avoid deception.⁴⁰

Color Appearance Disclosure: The Commission does not propose to change the color appearance disclosure from its current monochromatic scale. As suggested in the comments, there may be some benefit to a color version of the scale, and many manufacturers use color packaging. However, it is not clear that all manufacturers use full color printing for all packages, nor is it certain that a color scale would provide significant benefit compared to the existing scale. Accordingly, the Commission is reluctant to impose this additional burden for what may be a marginal benefit. However, nothing prohibits manufacturers from providing a color scale on

³⁹ 15 U.S.C. 45(a). The amendments do not require online retailers to post the label for such voluntarily-labeled products due to the burdens associated with determining, on a model-by-model basis, whether manufacturers have chosen to use the Lighting Facts format.

⁴⁰ See *Federal Trade Commission v. Lights of America, Inc., et al.*, SACV10-1333 JVS (MLGx)

their packages off the label, as long as such information is truthful and substantiated.

Compliance Period: The final rule provides manufacturers with two years to implement changes for the newly-covered bulbs. Though the Commission earlier sought comments on a two-and-a-half year compliance period (76 FR at 45721), manufacturers now have had notice of these impending changes for more than a year and the two year period should provide ample time to make these changes. A two year compliance period is appropriate because package changes are generally more complicated and burdensome than simple label changes and there is no impending market or regulatory change (*e.g.*, new DOE standards) to warrant an earlier date. However, manufacturers may begin using the new labeling requirements prior to the deadline. As with other labeling requirements, online retailers must post the new Lighting Facts labels. To provide online retailers with time to comply with the requirements, the final rule requires compliance six months after the packaging deadline (*i.e.*, a total of two and half years).⁴¹

B. More Durable Labels for Clothes Washers, Dishwashers, and Refrigerators

Background: In its March 15, 2012 NPRM, the Commission discussed the need to improve the availability of EnergyGuide labels in retailer showrooms. Information gathered by the FTC and the Government Accountability Office (GAO) demonstrates that many covered products displayed in retailer showrooms were missing the required EnergyGuide labels.⁴²

The Rule currently permits manufacturers of refrigerators, dishwashers, and clothes

(C.D. Cal. 2014).

⁴¹ The Rule does not require catalog sellers (*e.g.*, online retailers) to post the labels for products not covered by these new amendments but labeled voluntarily by manufacturers.

⁴² For example, in 2008, the FTC found labels either detached or missing on approximately 38% of the 8,500 appliances it examined across 89 retail locations in nine metropolitan areas. 77 FR at 15300.

washers to post the required EnergyGuide labels either using adhesive labels or hang tags.⁴³ In examining floor models, FTC staff found that products labeled with hang tags appear more likely to have detached or missing labels than those labeled with adhesives.⁴⁴ Additionally, comments received during the television label rulemaking indicated that hang tags often become twisted or dislodged in stores, supporting the FTC staff's past findings.⁴⁵

Concerned that hang tags may be less secure and more prone to detachment than adhesive labels, the Commission, in its March 15, 2012 NPRM, proposed prohibiting hang tags for clothes washers, dishwashers, and refrigerators.⁴⁶ In response, comments argued that adhesive labels applied directly to products might leave marks, especially on stainless steel finishes which appear on nearly a third of major home appliances. They also noted that affixing an adhesive to the protective film that covers products would be counterproductive because retailers likely would remove the film from display models, and may not reattach the label before displaying the product. They further explained that temperature and humidity might cause adhesive labels on products in storage or transit to become too sticky or lose their adhesive qualities. The commenters, therefore, recommended that the Commission consider other options.⁴⁷

In the 2014 SNPRM, the Commission, recognizing the legitimate concerns raised in the comments, did not propose eliminating hang tags altogether. Instead, it proposed requiring that

⁴³ 16 CFR 305.11(d)-(e). Because the Rule does not allow hang tags on the exterior of appliances, manufacturers must use adhesive labels for products with no accessible interior (*e.g.* water heaters).

⁴⁴ See 77 FR at 15300 & n. 24.

⁴⁵ See 76 FR 1038, 1042 (Jan. 6, 2011).

⁴⁶ 77 FR at 15299-15300. EPCA permits the Commission to prescribe the manner in which EnergyGuide labels are displayed 42 U.S.C. 6294(c)(3), (c)(9).

⁴⁷ 79 FR at 34648.

hang tags be affixed to products using cable ties (*i.e.*, “zip ties”), double strings connected through reinforced punch holes, or material with equivalent or greater strength. The Commission reasoned that these methods should improve label resilience, which in turn should reduce the incidence of missing labels, without posing undue burden for manufacturers. The Commission invited comments on this proposal.

Comments: The comments were split. The Joint Commenters and the California Utilities supported the proposal but provided some additional suggestions detailed below. Conversely, several industry comments opposed the change arguing it would do little to address the problem of missing labels.

The Joint Commenters agreed that hang tags should be more durable but recommended the Rule require reinforced punch holes on all hang tag labels, independent of the attachment method. They also argued that this would improve the uniformity of labels’ appearance. Though the California Utilities supported the proposal, they noted that adhesive labels on the inside panels of products would address manufacturer concerns about damage to stainless steel products.⁴⁸

In contrast, appliance industry members opposed the proposal because, in their view, it would increase manufacturers’ costs without accomplishing the goal of decreasing the incidence of missing labels. The Association of Home Appliance Manufacturers (AHAM) asserted that the SNPRM did not provide adequate evidence that the proposal will increase label durability or,

⁴⁸ Goodman, a heating and cooling equipment manufacturer, recommended that the Commission extend the hang tag option to the products they sell. However, as discussed in the SNPRM, the Rule does not allow hang tags for products that have no interior given the likelihood that hang tags will not remain in place if affixed on product exteriors. 79 FR at 34648, n. 53.

more importantly, that increased label durability will reduce the incidence of missing labels. It stated that, because the attaching material (cable tie, double string, etc.) is stronger than the reinforced paper used for the label, a determined consumer (or retailer) can easily remove the tag. In addition, some refrigerators, particularly those lacking a wire shelf or door handle, have no location to affix a cable or string hang tag without taping the string or cable tie to the shelf. Instead of new labeling requirements, AHAM urged the Commission to find ways for retailers to display labels in such a way that consumers do not try to detach them (or that retailers themselves do not feel compelled to remove them to effectively display the product). According to AHAM, retailers are in the best position to display labels in a way that prevents removal.

Both Alliance Laundry Systems and AHAM also repeated earlier requests to limit the Rule's label requirements to display models. They explained that most labels never appear on the showroom floor because retailers only use a handful of units as display models. For most units, consumers view the labels only upon delivery in their home. At that point, consumers generally want to remove the label from the products. Alliance therefore recommended that the Commission consider options that remove the burden associated with affixing physical labels on every unit.

Similarly, AHAM urged the Commission to consider eliminating physical labels on every unit sold and, instead, rely on electronic labels on websites. The Joint Commenters disagreed, arguing that, even though consumers may conduct online research prior to purchase, labels in showrooms are still necessary to allow consumers to examine multiple competing products.

Discussion: The final rule contains provisions to improve the durability of labels for refrigerators, clothes washers, and dishwashers, while providing manufacturers flexibility in

doing so. Under the final rule, manufacturers have the option of using traditional adhesive labels and flap tags, labels affixed with strips of tape along the label's entire top and bottom, and hang tags using cable ties (*i.e.*, "zip ties") or double strings connected through reinforced punch holes, or with attachment and label material of equivalent or greater strength and durability.

Manufacturers will have one year to come into compliance.

As discussed in earlier notices, more durable hang tag labels should increase the likelihood that labels remain affixed to products in showrooms. The Commission understands that determined consumers can remove labels from showroom products. However, the new requirements are not intended to prevent such deliberate actions. Rather, by their nature, the stronger labels should increase the likelihood that labels will remain on products during shipping and handling through the retail chain and during normal examination and inspection by consumers.

While the final rule increases the durability of labels, it provides manufacturers flexibility to use label methods most suited to their products. In recent informal visits to retail stores, the FTC staff has observed that manufacturers currently use a variety of means to attach labels on refrigerators, dishwashers, and clothes washers including conventional adhesive labels affixed to an interior or exterior surface, labels attached with wide pieces of reinforced tape on the top and bottom, hang tags attached with cable ties, hang tags attached with string, and hang tags made of laminated paper or plastic. Labels taped onto models across the entire top and bottom edge of the label appear to provide durability similar to a traditional adhesive label. Likewise, hang tags made of laminated paper or plastic provide durability similar to a paper hang tag with a reinforced punch hole. Accordingly, the final rule, in addition to specifying acceptable means of

affixing hang tags through the use of zip ties and reinforced punch holes, also provides manufacturers the flexibility to use any method that provides the same or greater durability as those methods specified in the Rule.

Finally, as explained above, the Commission does not propose abandoning physical labels. Notwithstanding the growing availability of Internet access, physical labels, especially those displayed at the point-of-sale, likely help a substantial number of consumers. Not all consumers have convenient online access, and not all of those who do conduct online research before making purchase decisions in stores. Moreover, even consumers who research products online are likely to benefit from viewing the physical labels in the store as they make final decisions and compare products at the point-of-purchase.⁴⁹ Nevertheless, the Commission will continue to consider evolving buying patterns and potential changes to the Rule. The Commission will consider any research that provides information on these issues or any specific proposals parties may have to change the Rule to decrease the burden on industry, while ensuring consumers have access to EnergyGuide information.⁵⁰

C. Labels on Room Air Conditioner Boxes

Background: In the SNPRM, the Commission proposed to require labels on room air conditioner boxes. The Commission based its proposal, in part, on staff observations during

⁴⁹ 42 U.S.C. 6294(c)(3) (the Commission may require the label to be displayed in a manner that the Commission determines is likely to assist consumers in purchasing decisions). As the Commission explained in the 2014 SNPRM (79 FR at 34649), it does not propose to limit labels to display models because retailers may not receive specific products designated for display and the appearance of labels on non-display models provides consumers useful energy consumption information after the purchase to help them understand the estimated energy use of their product.

⁵⁰ The amendments also eliminate obsolete sample labels (1 and 2) for refrigerators and clothes washers in Appendix L.

visits to major retail chains across the country, that room air conditioner models are usually displayed in boxes.⁵¹ Under the proposal, the labels would appear on the package's primary display panel. The Commission invited comments.

The Commission also proposed two changes related to recent DOE regulatory actions. First, it proposed to amend the room air conditioner label to replace Energy Efficiency Ratio (EER) ratings with Combined Energy Efficiency Ratio (CEER) ratings consistent with recent DOE changes for these products. The Commission indicated that the differences between EER and CEER should be minor. The Commission also proposed conforming changes to the label's capacity description for room air conditioners in section 305.7 and ratings on Sample Label 4. Second, the Commission proposed requiring EnergyGuide labels for portable air conditioners, in light of a recent DOE proposal to designate portable air conditioners as covered products under EPCA.⁵² The Commission is addressing the portable air conditioner issue in more detail in a separate notice.

Comments: The comments generally supported the proposal to place labels on room air conditioner boxes. Specifically, the comments identified the benefits of having labels on the box, recommended the Commission consider alternative disclosures for retailers who do not

⁵¹ See 79 FR at 34649. The visit results showed that room air conditioners were either in the box only (50% of models observed) or in the box with a few display units located on or near the boxes (29% of models observed). Only 21% were displayed solely out of boxes. These results are based on FTC staff's review of more than 160 models (not individual units) offered for sale at a variety of stores in eight different metropolitan areas. The results are not necessarily nationally representative.

⁵² 78 FR 40403 (July 5, 2013). Portable air conditioners are movable units, unlike room air conditioners, which are permanently installed on the wall or in a window.

display boxes, urged coordination with Canadian labeling requirements, and supported the replacement of EER disclosures with CEER.

The Joint Commenters repeated their earlier recommendation to require labels on both room air conditioner boxes and on the units themselves because a substantial portion (21%) of the models observed by FTC staff were displayed only outside of their boxes. The commenters explained that their own observations indicate the practice is even more common, though they did not provide specifics. They also argued the operating cost information on the room air conditioner label is particularly important because most households that rely on one or more room air conditioners have an annual household income below \$40,000. Additionally, they noted that room air conditioner labels can provide important information to renters who pay for equipment operation but do not purchase the units themselves.⁵³

Finally, the Joint Commenters urged the Commission to consider creating an affirmative labeling requirement for retailers who chose to display their room air conditioner without boxes. The commenters explained that, even if FTC does not require manufacturers to label both the room air conditioner and its packaging, EPCA grants the Commission authority to “require disclosure, in any printed matter displayed or distributed at the point-of-sale of such product.” 42 U.S.C. 6294(c)(4).

AHAM indicated it did not object to requiring EnergyGuide labels on room air conditioner boxes as long as Natural Resources Canada (NRCAN) harmonizes its EnerGuide

⁵³ The Joint Commenters noted that approximately 32 percent of households in rental housing rely on one or more room air conditioners for space cooling; for owner-occupied housing, the figure is less than 19 percent. In their view, if the air conditioner itself is labeled, even if the label is removed from the unit upon installation, that label is less likely to be thrown away (and

requirements with the Commission's. Absent such harmonization, AHAM strongly opposes the proposal because it would impose substantial burdens by forcing manufacturers to create labels for both the product (to meet Canadian requirements) and the box (to meet U.S. requirements). Accordingly, AHAM recommended that FTC work on such harmonization, consistent with the President's directive regarding international regulatory cooperation. AHAM also recommended a two year period to implement the changes.

The comments also supported the proposal to replace the EER reference on the room air conditioner label with CEER. AHAM, which proposed this change in earlier comments, explained that the switch would make the label consistent with the efficiency metric manufacturers currently report to DOE. The California Utilities also supported the proposal but further recommended disclosures for all efficiency metrics specified in the DOE energy conservation standards. Specifically, they reiterated their recommendation to require reporting of energy factor for water heaters, in addition to the cost and energy use. They stressed the importance of efficiency performance information to consumers and other market actors, particularly in the implementation of various national, regional, state, and utility programs. The commenters further recommended that the labels disclose any performance metric required for compliance with energy efficiency standards, including regulated performance metrics for room ACs, central ACs, and water heaters.

Discussion: The Commission plans to issue final amendments to require labels on room air conditioner boxes and replace the EER disclosure with CEER. The Commission will publish the final amendments and announce a compliance date in the future to provide ample time to

more likely to be provided to the tenant) than a label found only on the unit's packaging.

comply with both FTC and possible NRCAN requirements. Finally, the Commission does not plan to include additional efficiency rating information on various labels.

The final rule provides manufacturers with flexibility. Specifically, manufacturers have the flexibility to choose a background color for the label, thus avoiding full redesign of some boxes. In addition, manufacturers may use stickers on the box itself, allowing easy label updates in response to test procedure or range changes. With the notice provided by this proceeding, manufacturers should be able to incorporate the label on packaging without additional burden. The labels must appear on the package's principal display panel, that part of a label most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.⁵⁴

In the SNPRM, the Commission explained that it is not proposing to require labels on both the product and the box. Over the years, retailers have shifted away from displaying most room air conditioner models outside of packaging. Given this trend, the Commission expects that retailers will continue to display the vast majority of these products in boxes. While some retailers may display some models outside the packaging, the label's absence is mitigated in those limited situations by recent provisions increasing the labels' availability to consumers online.⁵⁵ Accordingly, the benefits of requiring the label on both the package and the product are likely to be small, while the burden of such a requirement would be substantial. However, the Commission may consider further requirements in the future if retail practices change.

⁵⁴ See, e.g., 15 U.S.C. 1459(f) (definition of "principal display panel" under the Fair Packaging & Labeling Act).

⁵⁵ Such measures include new requirements to ensure the label's presence on retailer and manufacturer websites (78 FR 2200 (Jan. 10, 2013)) and, as proposed in a separate Notice, the

Finally, given concerns raised by commenters about coordinating with Canadian labeling, the Commission will not announce a final compliance date for these new requirements until NRCAN implements conforming regulatory changes. Such coordination will prevent the burden of labeling units in two places (*i.e.*, box and unit). After NRCAN has addressed the issue, the Commission will issue a separate notice containing the final amendments and set an effective date and a compliance date of one year.

In addition, the California Utilities recommended that the Commission require disclosures such as water heater energy factor (EF) information to help consumers and aid in compliance with state building code standards. The Commission declines to change the Rule at this time. The labels for heating and cooling equipment already display metrics applicable to federal standards, including SEER, EER, and AFUE where appropriate. For central air conditioners, the Commission recently required EnergyGuide labels on product packaging for many models and these labels include SEER information as the primary disclosure. 78 FR 8362 (Feb. 6, 2013). For water heaters, the current label includes yearly energy cost as the primary disclosure. It is unclear whether the inclusion of EF information would be helpful because we have no evidence that most consumers are familiar with the term. In addition, state code enforcers can obtain such EF information from DOE's Compliance Certification Management System (CCMS) database.⁵⁶ Therefore, the Commission is not proposing to include EF information on the labels at this time.

inclusion of EnergyGuide labels on DOE's website.

⁵⁶ See <https://www.regulations.doe.gov/ccms>. As proposed in the SNPRM (79 FR at 34663), the final rule amends section 305.7 to clarify that the capacity for instantaneous water heaters should be expressed in gallons-per-minute.

D. Additional Information On EnergyGuide Labels

Background: In the 2012 NPRM, the FTC sought comment on whether to require Quick Response (QR) codes on EnergyGuide labels. 77 FR at 15302. QR codes are black and white matrix barcodes that provide access to a website through a mobile phone equipped with scanning software. A QR code could connect consumers to energy use information, including the broad energy impacts and greenhouse gas emissions associated with a product's use, through government websites or other source information. In the 2014 SNPRM (79 FR at 34654), the Commission did not propose requiring QR codes on labels. Until the development of website content to supplement information already on the EnergyGuide label, the Commission explained that it was premature to propose any specific vehicle for linking consumers to that content.

The Notice also indicated that the FTC staff would continue to consider providing full-fuel cycle and greenhouse gas information to consumers, on labels or elsewhere, and keep track of DOE's efforts to incorporate full-fuel-cycle analysis into their decision-making.⁵⁷ To aid that process, the Commission invited comments on these issues, including the overall usefulness of such information in consumer purchasing decisions.

Comments: In response to the SNPRM, the Commission received several comments from members of the natural gas industry – American Gas Association (AGA), American Public Gas Association (APGA), and Laclede Gas – urging the FTC and DOE to move forward with the development of consumer disclosures related to the full-fuel-cycle impacts of energy use.⁵⁸ Specifically, two of these commenters argued that the current EnergyGuide label should provide

⁵⁷ See, e.g., 77 FR 49701 (Aug. 17, 2012).

⁵⁸ The comments did not revisit the specific issue of QR codes on labels.

more than the current “site-based” energy information, which does not disclose production costs associated with the energy consumers ultimately use. Laclede also asserted that the labels lack useful information for comparing gas to electric operating costs and questioned the utility of existing information, such as information at *productinfo.energy.gov*, because it only allows for comparisons between the same fuel sources using site-based performance indicators.

The comments explained that “site” energy disclosures only provide information about the energy an appliance consumes in the home. According to AGA, such “site” energy information is not only inadequate, but can be misleading to consumers who may assume that a higher “site” efficiency rating means that an appliance uses less energy and emits fewer greenhouse gases overall. “Full-fuel-cycle” energy information addresses this shortfall by including not only energy consumption in the consumer’s home, but also the losses that occur in the transportation and distribution of the fuel or its generation, as well as the energy consumed in its production or extraction. In AGA’s view, full-fuel-cycle disclosures enable a more accurate analysis of the total energy usage and environmental impacts.⁵⁹

These commenters also argued that source-based energy information would allow utilities, state regulators, and consumers to understand the environmental benefits or costs, including the greenhouse gas emissions associated with appliance use.

APGA also noted that DOE, the National Academy of Sciences, and the ENERGY STAR program have recognized the shortcomings of site-based analysis. It explained that labels

⁵⁹ For appliances that use natural gas, nearly all of the energy losses and emissions occur at the point-of-use according to these comments. In addition, the comments indicated the overall natural gas delivery system on a full-fuel-cycle basis is highly efficient because approximately 92 percent of the energy produced reaches the consumer as usable energy.

derived using a source based approach will fully identify the emissions reduction through the entire energy cycle. AGA agreed, arguing that the label or other required disclosures should include information reflecting the energy use, life-cycle cost, and associated emissions on a full-fuel-cycle basis. AGA recommended consideration of full-fuel-cycle energy use and emissions information on a regional basis.

The commenters urged the Commission to expedite interaction with DOE on this issue. According to AGA, DOE already has all the information available through the existing residential furnace efficiency test procedure on full-fuel-cycle and emissions data. DOE agreed to work with the Commission to improve existing online databases, to increase consumer access to energy use and emissions data through web-based information tools, and to collaboratively determine if changes to the Energy Guide labeling requirements would be beneficial to consumers. 76 FR 51281 (Aug. 18, 2011).

Discussion: The FTC staff is discussing options with DOE staff for providing consumers with information related to full-fuel-cycle impacts and greenhouse gases. The staff will focus on considering possible changes to existing online resources, either at DOE or FTC, to provide consumers with relevant information as it relates to certain products. The Commission does not plan to consider content changes to the Energy Guide label itself until such online content is fully developed.

The comments raise concerns about the failure of “site” efficiency rating disclosures (*e.g.*, energy factor for water heaters or annual fuel utilization efficiency for furnaces) to reveal relevant differences in energy costs and other environmental aspects of product operation. Although the FTC will continue to consider ways to communicate full-fuel-cycle impacts as

discussed above, the Commission notes that the primary disclosures on EnergyGuide labels for water heaters, clothes washers, and dishwashers are the estimated annual energy costs the consumer will pay, not the product's efficiency rating. In the past, the Commission has identified estimated operating cost as the best comparative descriptor for consumers on energy labels.⁶⁰ Such cost information is featured prominently on most EnergyGuide labels. Although the label cost disclosures do not provide details about the full-fuel-cycle impacts or associated greenhouse gas emissions, they do demonstrate significant differences among the energy costs associated with different fuels used to operate these products that may not be provided by efficiency ratings. In addition, for furnaces and central air conditioners, FTC and DOE have developed an online cost calculator to provide similar onsite cost estimates for those products through DOE's website.

E. Schedule for Range Revisions

Background: In the 2012 NPRM, the Commission sought comment on whether to update range and cost information more frequently than the five years required by 16 CFR 305.10(a). In earlier comments, several energy efficiency organizations suggested that the FTC adopt a three-year schedule for most products.⁶¹ In the 2014 SNPRM (79 FR at 34657), the Commission did not propose to change the five-year schedule, explaining that it strikes a reasonable balance by providing appropriate updates without imposing unnecessary costs or creating inconsistencies between showroom labels.

Comments: The Joint Commenters argued that a comprehensive label database on the existing DOE website, <https://www.regulations.doe.gov/ccms>, would make more frequent

⁶⁰ See, e.g., 72 FR 49948, 49953 (Aug. 29, 2007).

⁶¹ Joint Comments from Energy-Efficiency and Consumer Organizations (May 16, 2012)

updates easier to implement because retailers could print new labels and replace older ones or simply provide links to this information.⁶² They also urged the Commission to avoid delays in updating range information by considering DOE's rulemaking schedule and coordinating updates to the EnergyGuide labels so that information does not become stale. Finally, the Joint Commenters recommended that the Commission update the label ranges for heat pump electric storage water heaters because a new model has appeared on the market that has an estimated annual energy cost nearly \$60 less than the lowest cost displayed on the current label.

In contrast, several comments supported the five-year update schedule. Alliance Laundry Systems argued the current approach maintains certainty, allowing manufacturers to plan for label changes, lowers scrap costs of the printed labels, and reduces disruption to the manufacturing process. It also reduces consumer confusion in the marketplace because more frequent fuel energy rate and range changes would yield energy labels with differing descriptors on the same model manufactured on different dates. AHAM argued that frequent updates could also impact label information during the transition periods and make it difficult for consumers to compare old and new labels. AHAM, therefore, argued that the existing five-year schedule strikes the proper balance between maintaining consistent labels and providing updates to the cost and range information.⁶³

Discussion: The Commission does not plan to change the five-year schedule for updating ranges. However, as suggested by the Joint Commenters, the Commission, in a separate notice,

(#560957-00015).

⁶² 79 FR at 34656-57.

⁶³ NEMA also agreed with the Commission's approach.

will seek comment on updating water heater range information given recent changes to the DOE test procedure. 79 FR 40541 (July 11, 2014).

In establishing the current five-year schedule, the Commission sought to strike a balance between maintaining consistent labels and providing updates to cost and range information.⁶⁴ Though there are benefits to more frequent updates, the transition periods between such updates create inconsistent labels in the market, which can cause confusion, hamper comparison shopping, and reduce confidence in the label.⁶⁵ Moreover, the current five-year interval range is consistent with past trends in market data.⁶⁶ For example, before 2007, the Commission reviewed model data every year and revised the ranges if they deviated 15% or more from the previous year. Using this approach, the Commission generally updated product ranges at about five-year intervals.⁶⁷ If parties identify ranges or fuel rate information that should be updated before the five-year period ends, they should alert the Commission. Finally, the FTC staff will continue to work with DOE staff to coordinate range updates with ongoing DOE changes to test procedures and standards.

F. Retailer Responsibility

Background: Currently, the Rule prohibits retailers from removing labels or rendering them illegible,⁶⁸ but does not otherwise require retailers to display labels at the points-of-sale. In 2011, when the Commission issued additional label requirements for televisions, it declined to

⁶⁴ See also 78 FR 1779, 1781 (Jan. 9, 2013).

⁶⁵ See 72 FR 49948, 49959 (Aug. 29, 2007) (discussing potential problems associated with frequent updates).

⁶⁶ See 79 FR at 34657 (further discussion of such trends).

⁶⁷ 72 FR at 49952.

⁶⁸ 16 CFR 305.4(a)(2).

impose new retailer obligations, noting that the amendments for labels (both in stores and online) contain measures calculated to keep labels attached and visible on display models.⁶⁹

In the 2014 SNPRM, the Commission explained its plans to pursue improvements in label design to increase label presence on display models before imposing new responsibilities for retail stores. The Commission reasoned that it was premature to impose costs on retailers when better label requirements and greater availability of online labels may alleviate the problem.

Comments: The comments provided different views on the retailer liability issue. The Joint Commenters urged the Commission to reconsider its position, arguing that the SNPRM overstated the burdens imposed by expanded retailer liability. According to these comments, retailers already monitor product displays on a near-constant basis when they clean display models and ensure pricing and other product information is present. In addition, some retailers appear to replace missing or damaged EnergyGuide labels. Given the Commission's plans to require the submission of labels to DOE's website, <https://www.regulations.doe.gov/ccms>, retailers are less likely to become confused when replacing missing labels. In addition, AHAM expressed a general concern "that retailer responsibility needs to be addressed." However, it did not recommend changes to the current requirements, which already prohibit retailers from removing labels or rendering them illegible. AHAM did request a clarification stating that manufacturers have no responsibility for labels once a unit leaves the manufacturer's control.

In contrast, the Direct Marketing Association (DMA), which represents retailers, encouraged the Commission to refrain from imposing affirmative duties on retailers. In DMA's

⁶⁹ 76 FR 1038, 1047 (Jan. 6, 2011).

view, the Commission can best ensure increased information to consumers by pursuing label attachment improvements without imposing new burdens at the point-of-sale. DMA also argued that an affirmative retailer requirement, in its opinion, could increase mislabeling inadvertently because retailers are not well-positioned to identify the correct labels and do not have readily available access to a library of substitute or replacement labels. A new retailer requirement would force sales personnel to halt customer service and verify correct product labels, attempt to locate proper labels, and attach a substitute label whenever a missing label was noticed. DMA also argued that a new requirement would penalize retailers for situations beyond their control (*e.g.*, when labels become damaged while the product is in transit, or when consumers damage the labels on display products).

Discussion: Consistent with the discussion in the SNPRM, the Commission does not plan to expand the general retailer requirements at this time.⁷⁰ It is premature to impose these costs when better labeling, required by the amendments, and greater availability of online labels may solve the problem. If these new solutions fail, the Commission can reconsider whether additional requirements are necessary.⁷¹

G. Marketplace Websites

Background: In January 2013, the Commission published final amendments to the Rule's catalog provision, requiring Internet sellers to display the label – either in full or as a logo

⁷⁰ 79 FR at 34658.

⁷¹ In response to AHAM's concerns about manufacturer responsibility for showroom products, the Commission notes that the current Rule does not direct manufacturers to replace missing labels in a retailer showroom. However, the Rule prohibits manufacturers, in addition to retailers, distributors, and private labelers, from removing or rendering illegible any label required by the Rule. 16 CFR 305.4(a)(2).

icon with a hyperlink – for most covered products.⁷² This requirement applies to “[a]ny manufacturer, distributor, retailer, or private labeler who advertises a covered product on an Internet website in a manner that qualifies its site as a catalog under this Part.”⁷³ The Rule defines “catalog” as “printed material, including material disseminated over the Internet, which contains the terms of sale, retail price, and instructions for ordering, from which a retail consumer can order a covered product.”⁷⁴

Those amendments do not cover websites that serve solely as platforms for sellers by performing functions such as hosting sellers’ advertising, matching buyers’ searches to sellers’ products, and processing payment and shipment directions.⁷⁵ The Rule does not require such entities to either display, or ensure the display of, labels for covered products sold by third parties. However, the Rule continues to apply to those third parties (retailers, manufacturers, distributors, and private labelers) that sell their products on such websites. The Rule also applies

⁷² See 78 FR at 2209 (amending 16 CFR 305.20; effective January 15, 2014). For a limited set of covered products – showerheads, faucets, water closes, urinals, general service fluorescent lamps, fluorescent lamp ballasts, and metal halide lamp fixtures – the Rule requires the disclosure of specific information instead of displaying the EnergyGuide or Lighting Facts label. See *id.* (amending 16 CFR 305.20(a)(ii)).

⁷³ 16 CFR 305.20(a).

⁷⁴ 16 CFR 305.2(h).

⁷⁵ EPCA states that if a “manufacturer or any distributor, retailer, or private labeler of such product advertises such product in a catalog from which it may be purchased, such catalog shall contain all information required to be displayed on the label, except as otherwise provided by rule of the Commission.” 42 U.S.C. 6296(a). EPCA defines a “retailer” as “a person to whom a consumer product is delivered or sold, if such delivery or sale is for purposes of sale or distribution in commerce to purchasers who buy such product for purposes other than resale,” and a “distributor” as “a person (other than a manufacturer or retailer) to whom a consumer product is delivered or sold for purposes of distribution in commerce.” It defines “manufacturer” as “any person who manufactures a consumer product,” and “private labeler” as “an owner of a brand or trademark on the label of a consumer product, which bears a private label.” 42 U.S.C. 6291(12)-(15). The Rule’s definitions of “manufacturer,” “distributor,” “retailer,” and “private

to these marketplace websites if they act as retailers on their own websites.⁷⁶

Comments: In response to the SNPRM, the Joint Commenters continued to urge the Commission to create a specific requirement for marketplace websites. The commenters argued that marketplace website liability is the only practicable way to police the thousands of listings from diverse sellers who often have little control over the final content that appears online. The Joint Commenters also provided more information regarding non-compliance of retailers participating on marketplace websites.

The Direct Marketing Association disagreed and supported the Commission's proposal. DMA argued that the Rule's current requirements appropriately place responsibility for labeling on the parties with the greatest ability to verify the accuracy of the information. According to DMA, imposing these requirements on marketplace websites would be costly and unintentionally increase the risk of inadvertent mislabeling.

DMA argued that additional requirements on marketplace websites would create "secondary" or duplicate coverage, as this information is already provided to consumers elsewhere. At present, in its view, the burdens of imposing the requirement far outweigh any benefit to consumers from providing information that would be, at best, redundant.

Discussion: The Commission is not proposing additional requirements. As explained in the 2012 SNPRM (79 FR at 34658), the Rule requires retailers participating on marketplace sites

labeler" are consistent with EPCA's definitions. *See* 16 CFR 305.2.

⁷⁶ Taking physical possession of the product would likely render the marketplace website a "retailer" or "distributor" under EPCA and the Rule. *See* fn. 74, *supra*. Therefore, a product's delivery to a marketplace website's warehouse for temporary storage before proceeding in shipment to the consumer may trigger the marketplace website's responsibility for displaying the product's label online under the current Rule.

to display labels for the products they are offering for sale pursuant to section 305.20 of the Rule.

The Rule already requires retailers, manufacturers, distributors, and private labelers selling covered products on marketplace websites to display labels for those products. Therefore, an additional requirement aimed at marketplace websites would create a secondary layer of coverage. Although added coverage may improve the availability of information to consumers, it is not clear whether that potential benefit outweighs the added burdens on such websites.

However, the FTC staff will continue to monitor this issue as online retail practices evolve.

H. Clothes Dryer Labels

Background: When the Commission initially issued the energy labeling requirements in 1979, it declined to label dryers, citing their limited annual energy cost range.⁷⁷ At that time, the maximum annual energy cost difference between dryers was only five dollars and the Commission concluded the costs of testing and labeling would “far outweigh the potential benefits” of labeling.⁷⁸ In the SNPRM, the Commission explained that recent DOE dryer information suggests that dryer efficiency continues to vary little across available models.⁷⁹ Although electric dryers using heat-pump technology are more efficient than current models, few

⁷⁷ Under EPCA, the Commission must prescribe labels for dryers unless it finds labeling would not be technologically or economically feasible. 42 U.S.C. 6294(a)(1).

⁷⁸ 44 FR 66466, 66469 (Nov. 19, 1979).

⁷⁹ See U.S. DOE, *Technical Support Document (TSD) for Energy Conservation Program: Energy Conservation Standards for Residential Clothes Dryers and Room Air Conditioners*; Direct Final Rule TSD, Table 8.2.26, available at <http://www.regulations.gov/#!documentDetail;D=EERE-2007-BT-STD-0010-0053>. The table indicates that the difference in annual energy use between the baseline model and the most efficient non-heat-pump dryer is 89 kWh. At energy prices of \$0.12 per kWh, this is approximately \$11 per year. Considering inflation, this spread is even smaller than the cost range identified by the Commission in 1979. In addition, DOE’s data suggests that annual operating costs for these dryers is generally lower than \$80.

such models are currently available in the U.S. Absent meaningful variation in energy usage, the Commission doubted that labeling would significantly aid consumer choices. However, the Commission explained that changes to the DOE test procedure may reveal greater differences among models.

Comments: In response to the SNPRM, commenters offered different views on the Commission's decision to forego proposing clothes dryer labels. For example, Alliance Laundry Systems supported the position because DOE testing indicates only small differences between the operating costs of the most efficient and least efficient electric models currently available.

However, the Joint Commenters urged the Commission to revisit the issue. They asserted that the SNPRM did not provide adequate evidence to demonstrate that the benefits of clothes dryer labels would be minimal. First, they argued that high-efficiency dryers are likely to populate the market soon. According to the comments, one manufacturer has unveiled plans to introduce a heat pump dryer and another has introduced new efficient models. In addition, according to the Joint Commenters, dryers already exist that meet the new ENERGY STAR specifications, which require, on average, approximately 20% less energy use than allowed under DOE's 2015 minimum efficiency standards. This is a larger energy use spread than the new ENERGY STAR specifications for refrigerators. The Joint Commenters also stated that, according to DOE energy data, dryer labels may help some consumers choose between gas and electric dryers because a substantial number of consumers currently use gas for cooking but electricity for clothes drying.

The Joint Commenters also took issue with the Commission's interpretation of EPCA's test for requiring clothes dryer labels. They explained that EPCA requires clothes dryer labels as

long as labeling is “technologically and economically feasible.” In their view, EPCA does not allow the Commission to consider whether the costs of labeling outweigh the benefit.⁸⁰ Instead, the Commission can forego labeling only if it determines that manufacturers are not “economically capable” of labeling these products. In the Joint Commenters’ view, the FTC has not made such a finding.

Finally, the Joint Commenters noted that DOE currently allows manufacturers to use two alternative test procedures.⁸¹ They recommended that the Commission require manufacturers to use the procedure codified at Appendix D2 to 10 C.F.R. Part 430 Subpart B. The Commenters reasoned that this version of the test will better assist consumers in making purchasing decisions because ENERGY STAR already requires it, and the procedure is more accurate.

Discussion: The Commission will continue to follow developments with clothes dryers. The commenters make several compelling arguments for label requirements. As more models appear, the Commission will consider establishing a labeling requirement for these products.

However, in the meantime, the existence of two separate DOE test procedures raises serious complications for creating labeling requirements. Given the existence of two DOE tests, the Commission does not plan to require one DOE version over another because, by doing so, the Commission would, in essence, circumvent DOE’s efforts to resolve the conflicts in its own testing requirements. The resolution of this technical issue is best left to DOE. The Commission will consider revisiting this after DOE resolves the testing issue.⁸²

⁸⁰ *Citing Am. Textile Mfrs. Inst., Inc. v. Donovan*, 452 U.S. 490, 508-09 (1981) (interpretation of the term “feasible” in the context of the Occupational Safety and Health Act of 1970).

⁸¹ *See* 78 FR 49608, 49641 (Aug. 14, 2013).

⁸² The Commission disagrees with the commenters’ interpretation of EPCA’s requirement that

I. Plumbing Products

Consistent with the proposal in the SNPRM, the final amendments include two minor changes related to plumbing products.⁸³ First, the amendments clarify that retail websites may use a hyperlink (labeled, “water usage”) to guide consumers to flow rate information for the covered plumbing products they sell. Recent amendments to section 305.20 allow online retailers to use a hyperlink to connect consumers to EnergyGuide and Lighting Facts labels for specific products, but do not specifically allow online sellers to link to required plumbing disclosures.⁸⁴ The Plumbing Manufacturers Institute supported this change, but suggested the Commission allow other descriptors in the hyperlink such as “flow rate” and “water consumption” to provide flexibility to sellers. The Commission agrees. Unlike EnergyGuide and Lighting Facts labels, the Rule requires no uniform format for plumbing disclosures. Accordingly, a uniform hyperlink to connect consumers to such information is not necessary. Second, the amendments effect a conforming change to the definition of “showerhead” in Part 305 to the reflect recent DOE amendments.⁸⁵

IV. Paperwork Reduction Act

labeling be technologically and economically feasible. In initially promulgating the Rule in 1979, the Commission, after examining the statute and statutory history, concluded “the Commission believes that Congress[’s] intent was to permit the exclusion of any product category, if the Commission found that the costs of the labeling program would substantially outweigh any potential benefits to consumers.” 44 FR at 66467-68. In the Commission’s view, labeling in such circumstances would not be “economically feasible.” 42 U.S.C. 6294(a)(1).

⁸³ In a separate notice, the Commission plans to propose an update to the reference to American Society of Mechanical Engineers (ASME) standards in section 305.16 of the Rule.

⁸⁴ 78 FR 2200 (Jan. 10, 2013).

⁸⁵ 78 FR 62970 (Oct. 23, 2013).

The current Rule contains recordkeeping, disclosure, testing, and reporting requirements that constitute information collection requirements as defined by 5 CFR 1320.3(c), the definitional provision within the Office of Management and Budget (OMB) regulations that implement the Paperwork Reduction Act (PRA). OMB has approved the Rule's existing information collection requirements through May 31, 2017 (OMB Control No. 3084 0069). The amendments make changes in the Rule's labeling requirements that will increase the PRA burden as detailed below.⁸⁶ Accordingly, the Commission is seeking OMB clearance specific to the Rule amendments.

Package and Product Labeling (expanded lamp coverage): The final amendments require manufacturers to label several new bulb types. Accordingly, manufacturers will have to amend their package and product labeling to include new disclosures. The new requirements impose a one-time adjustment for manufacturers. Commission staff estimates that there are 50 manufacturers making approximately 3,000 of these newly covered products. This adjustment will require an estimated 600 hours per manufacturer on average. Annualized for a single year reflective of a prospective 3-year PRA clearance, this averages to 200 hours per year. Thus, the label design change will result in cumulative annualized burden of 10,000 hours (50 manufacturers x 200 hours). In estimating the associated labor cost, FTC staff assumes that the

⁸⁶ As indicated in the SNPRM, 79 FR at 34660, n. 139, several labeling changes, including changes to label attachment methods and refrigerator ranges, should impose no or *de minimis* additional burden beyond existing estimates, or manufacturers should be able to incorporate the proposed changes into their normally scheduled package or label revisions. The PRA analysis for this rulemaking focuses strictly on the information collection requirements created by and/or otherwise affected by the amendments. Unaffected information collection provisions have previously been accounted for in past FTC analyses under the Rule and are covered by the current PRA clearance from OMB.

label design change will be implemented by graphic designers at an hourly wage rate of \$24.36 per hour based on Bureau of Labor Statistics information.⁸⁷ Thus, staff estimates annual labor cost for this adjustment will total \$243,600 (10,000 hours x \$24.36 per hour).

Testing (expanded lamp coverage): Commission staff assumes that manufacturers will have to test 3,000 basic light bulb models out of an estimated 6,000 covered products. The Commission also assumes that testing will require 14 hours for each model for a total of 42,000 hours. In calculating the associated labor cost estimate, staff assumes that this work will be implemented by electrical engineers at an hourly wage rate of \$46.05 per hour. Thus, Commission staff estimates that the label design change will result in associated labor costs of approximately \$1,934,100 (42,000 hours x \$46.05 per hour).

Recordkeeping (expanded lamp coverage): Pursuant to section 305.21 of the amended Rule, manufacturers of the newly covered specialty bulbs must keep test data on file for a period of two years after the production of a covered product model has been terminated. Assuming one minute per model and 3,000 basic models, the recordkeeping burden would total 50 hours. Assuming further that these filing requirements will be implemented by data entry workers at an hourly wage rate of \$15.48 per hour, the associated labor cost for recordkeeping would be approximately \$774 per year.

Catalog Disclosures (expanded lamp coverage): The amendments would require sellers offering covered products through catalogs (both online and print) to disclose energy use for each

⁸⁷ The mean hourly wage cited above and those that follow are drawn from Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment and Wages – May 2014, Table 1 (National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2014), available at: <http://www.bls.gov/news.release/ocwage.t01.htm>.

light bulb for sale. Because this information is supplied by the product manufacturers, the burden on the retailer consists of incorporating the information into the catalog presentation. FTC staff estimates that there are 200 online and paper catalogs for these products that would be subject to the Rule's catalog disclosure requirements. Staff additionally estimates that the average catalog contains approximately 250 such products and that entry of the required information takes one minute per covered product.⁸⁸ The cumulative disclosure burden for catalog sellers is thus 833 hours (200 retailer catalogs x 250 products per catalog x 1 minute each per product shown). Assuming that the additional disclosure requirement will be implemented by data entry workers at an hourly wage rate of \$15.48, associated labor cost would be approximately \$12,894 per year.

⁸⁸ This estimate has been increased from the 2014 SNPRM to reflect the likelihood that retail websites offer a larger number of specialty consumer lamp models than first estimated.

Estimated annual non-labor cost burden (expanded lamp coverage): Commission staff estimates that the annualized capital cost of expanding the light bulb label coverage is \$1,535,000. This estimate is based on the assumptions that manufacturers will have to change 3,000 model packages over an approximate three-year period to meet the new requirements⁸⁹ and that package label changes for each product will cost \$1,335.⁹⁰ Manufacturers place information on products in the normal course of business. Annualized in the context of a 3-year PRA clearance, these non-labor costs would average \$1,335,000 (3,000 model packages x \$1,335 each over 3 years). As for product labeling, the Commission assumes that the one-time labeling change will cost \$200 per model for an annualized estimated total of \$200,000 (3,000 models x \$200 over 3 years). Annualized in the context of a 3-year PRA clearance, the total non-labor costs would thus average \$1,535,000.

Total Estimate: Accordingly, the revised estimated total hour burden of the amendments is 52,883 with associated labor costs of \$2,191,368 and annualized capital or other non-labor costs totaling \$1,535,000.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (IRFA) with a Proposed Rule, and a Final Regulatory Flexibility Analysis (FRFA) with the final Rule, unless the Commission certifies

⁸⁹ This assumes that manufacturers will change packages for one-third of their products in the normal course of business each year. The multi-year compliance period (two and a half years) and the notice provided by this proceeding should minimize the likelihood that manufacturers will have to discard package inventory. In addition, manufacturers may use stickers in lieu of discarding inventory.

⁹⁰ See 75 FR at 41712 n. 149 and accompanying text.

that the Rule will not have a significant economic impact on a substantial number of small entities.⁹¹

The Commission does not anticipate that the final amendments will have a significant economic impact on a substantial number of small entities. The Commission recognizes that many affected entities may qualify as small businesses under the relevant thresholds. The Commission does not expect, however, that the economic impact of implementing the amendments will be significant because the Commission plans to provide businesses with ample time to implement the requirements, and the amendments involve simple information disclosures that do not impose substantial burdens.

The Commission estimates that the amendments will apply to about 75 light bulb manufacturers and an additional 150 online and paper catalog sellers of covered products. The Commission expects that approximately 150 of these entities qualify as small businesses.

Although the Commission certified under the RFA that the amendments would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an FRFA in order to explain the impact of the amendments on small entities as follows:

A. Description of the Reasons That Action by the Agency Is Being Taken

The Commission initiated this rulemaking to increase the availability of energy labels to consumers while minimizing burdens on industry, and generally improve existing requirements.

⁹¹ 5 U.S.C. 603-605.

B. Issues Raised by Comments in Response to the IRFA

The Commission did not receive any comments specifically related to the impact of the final amendments on small businesses. No comments were filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule amendments. Comments that involve impacts on all entities are discussed above.

C. Estimate of Number of Small Entities to Which the Amendments Will Apply

Under the Small Business Size Standards issued by the Small Business Administration, appliance manufacturers qualify as small businesses if they have fewer than 1,000 employees (for other household appliances the figure is 500 employees). Catalog sellers qualify as small businesses if their sales are less than \$8.0 million annually. The Commission estimates that there are approximately 150 entities subject to the proposed rule's requirements that qualify as small businesses.⁹²

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

As discussed above, the changes would slightly increase reporting or recordkeeping requirements associated with the Commission's labeling rules. The amendments likely will increase compliance burdens by extending the labeling requirements to new types of light bulbs. The Commission assumes that the label design change will be implemented by graphic designers.

⁹² See 75 FR at 41712.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed Rule.

F. Description of Steps Taken To Minimize Significant Economic Impact, If Any, on Small Entities, Including Alternatives

The Commission sought comment and information on the need, if any, for alternative compliance methods that would reduce the economic impact of the Rule on such small entities. In particular, the Commission sought comments on whether it should time the Rule's effective date to provide additional time for small business compliance and whether to reduce the amount of information catalog sellers must provide. As discussed in this Notice, the Commission received no comments suggesting shorter compliance periods for requirements. However, to minimize the impacts on manufacturers and retailers in posting the required labels, the Commission has set effective dates for the new requirements to minimize burden on manufacturers as they implement them.

Final Rule

List of Subjects in 16 CFR part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

For the reasons discussed above, the Commission amends part 305 of title 16, Code of Federal Regulations, as follows:

**PART 305--ENERGY AND WATER USE LABELING FOR CONSUMER PRODUCTS
UNDER THE ENERGY POLICY AND CONSERVATION ACT (“ENERGY LABELING
RULE”)**

1. The authority citation for part 305 continues to read as follows:

AUTHORITY: 42 U.S.C. 6294.

2. In § 305.3, revise paragraphs (j) and (r) and add paragraph (z) to read as follows:

§ 305.3 Description of covered products.

* * * * *

(j) *Fluorescent lamp ballast* means a device which is used to start and operate fluorescent lamps by providing a starting voltage and current and limiting the current during normal operation.

* * * * *

(r) *Showerhead* means a component or set of components distributed in commerce for attachment to a single supply fitting, for spraying water onto a bather, typically from an overhead position, excluding safety shower showerheads.

* * * * *

(z) *Specialty consumer lamp* means

(1) Any lamp that:

(i) Is not included under the definition of general service lamp in this part;

(ii) Has a lumen range between 310 lumens and no more than 2,600 lumens or a rated wattage between 30 and 199;

(iii) Has one of the following bases:

(A) A medium screw base;

(B) A candelabra screw base;

(C) A GU-10 base; or

(D) A GU-24 base; and

(iv) Is capable of being operated at a voltage range at least partially within 110 and 130 volts.

(2) *Inclusions.* The term *specialty consumer lamp* includes, but is not limited to, the following lamps if such lamps meet the conditions listed in paragraph (1):

(i) vibration-service lamps as defined at 42 U.S.C. 6291(30)(AA);

(ii) rough service lamps as defined at 42 U.S.C. 6291(30)(X);

(iii) appliance lamps as defined at 42 U.S.C. 6291(30)(T); and

(iv) shatter resistant lamps (including a shatter proof lamp and a shatter protected lamp) as defined in 42 U.S.C. 6291(30)(Z).

(3) *Exclusions.* The term *specialty consumer lamp* does not include:

(i) A black light lamp;

(ii) A bug lamp;

(iii) A colored lamp;

(iv) An infrared lamp;

(v) A left-hand thread lamp;

(vi) A marine lamp;

(vii) A marine signal service lamp;

(viii) A mine service lamp;

(ix) A sign service lamp;

(x) A silver bowl lamp;

- (xi) A showcase lamp;
- (xii) A traffic signal lamp;
- (xiii) A G-shape lamp with diameter of 5 inches or more;
- (xiv) A C7, M-14, P, RP, S, or T shape lamp;
- (xv) A intermediate screw-base lamp; and
- (xvi) A plant light lamp.

* * * * *

3. In § 305.7, revise paragraph (d) to read as follows:

§ 305.7 Determinations of capacity.

* * * * *

(d) *Water heaters*. The capacity shall be the first hour rating (for storage-type models) and gallons per minute (for instantaneous-type models), as determined according to appendix E to 10 CFR part 430, subpart B.

* * * * *

4. In § 305.8, paragraph (a)(4) is revised to read as follows:

§ 305.8 Submission of data.

(a) * * *

(4) This section does not require reports for general service light-emitting diode (LED or OLED) lamps or specialty consumer lamps.

* * * * *

5. In § 305.11, paragraph (d) is revised to read as follows:

§ 305.11 Labeling for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes

washers, water heaters, room air conditioners, and pool heaters.

* * * * *

(d) Label types. The labels must be affixed to the product in the form of an adhesive label or a hang tag as follows:

(1) *Adhesive labels.* All adhesive labels should be applied so they can be easily removed without the use of tools or liquids, other than water, but should be applied with an adhesive with an adhesion capacity sufficient to prevent their dislodgment during normal handling throughout the chain of distribution to the retailer or consumer. The paper stock for pressure-sensitive or other adhesive labels shall have a basic weight of not less than 58 pounds per 500 sheets (25" x 38") or equivalent, exclusive of the release liner and adhesive. A minimum peel adhesion capacity for the adhesive of 12 ounces per square inch is suggested, but not required if the adhesive can otherwise meet the above standard. In lieu of a label with adhesive backing, manufacturers may adhere the label with adhesive tape, provided the tape is affixed along the entire top and bottom of the label.

(2) *Hang tags.* Labels may be affixed to the product in the form of a hang tag using cable ties or double strings connected through reinforced punch holes, or with attachment and label material of equivalent or greater strength and durability. If paper stock is used for hang tags, it shall have a basic weight of not less than 110 pounds per 500 sheets (25 ½ "x 30 ½ " index). When materials are used to attach the hang tags to appliance products, the materials shall be of sufficient strength to insure that if gradual pressure is applied to the hang tag by pulling it away from where it is affixed to the product, the hang tag will tear before the material used to affix the hang tag to the product breaks.

* * * * *

6. In § 305.15, revise paragraph (b); redesignate paragraphs (c), (d), (e), and (f) as paragraphs (e), (f), (g), and (h); add new paragraphs (c) and (d); and revise newly redesignated paragraphs (f)(1) and (f)(4) through (6) to read as follows:

§ 305.15 Labeling for lighting products.

* * * * *

(b) *General service lamps.* Except as provided in paragraph (f) of this section, any covered product that is a general service lamp shall be labeled as follows:

* * * * *

(c) *Specialty consumer lamps.* (1) Any specialty consumer lamp that is a vibration-service lamp as defined at 42 U.S.C. 6291, rough service lamp as defined at 42 U.S.C. 6291(30), appliance lamp as defined at 42 U.S.C. 6291(30); or shatter resistant lamp (including a shatter proof lamp and a shatter protected lamp) must be labeled pursuant to the requirements in paragraphs (b)(1) through (7) of this section.

(2) *Specialty consumer lamp Lighting Facts label content.* All specialty consumer lamps not covered by paragraph (c)(1) of this section shall be labeled pursuant to the requirements of paragraphs (b)(1) through (7) of this section or as follows:

(i) The principal display panel of the product package shall be labeled clearly and conspicuously with the following information consistent with the Prototype Labels in Appendix L:

(A) The light output of each lamp included in the package, expressed as “Brightness” in average initial lumens rounded to the nearest five;

(B) The estimated annual energy cost of each lamp included in the package, expressed as “Estimated Energy Cost” in dollars and based on usage of 3 hours per day and 11 cents (\$0.11) per kWh; and

(C) The life, as defined in § 305.2(w), of each lamp included in the package, expressed in years rounded to the nearest tenth (based on 3 hours operation per day).

(ii)(A) If the lamp contains mercury, the principal display panel shall contain the following statement in minimum 10 point font:

“Contains Mercury For more on clean up and safe disposal, visit epa.gov/cfl.”

(B) The manufacturer may also print an “Hg[Encircled]” symbol on package after the term “Contains Mercury.”

(iii) If the lamp contains mercury, the lamp shall be labeled legibly on the product with the following statement: “Mercury disposal: epa.gov/cfl” in minimum 8 point font.

(iv) If the required disclosures for a lamp covered by paragraph (c)(2) of this section will not be legible on the front panel of a single-card, blister package due to the small size of the panel, the manufacturer or private labeler may print the statement “Lighting Facts see back” on the principal display panel consistent with the sample label in Appendix L as long as the Lighting Facts label required by paragraph (b)(3) of this section appears on the rear panel.

(v) No marks or information other than that specified in this part shall appear on the Lighting Facts label.

(3) *Specialty Lighting Facts label format.* Information specified in paragraph (c)(2) of this section shall be presented on covered lamp packages in the format, terms, explanatory text, specifications, and minimum sizes as shown in the Prototype Labels of appendix L and consistent

in format and orientation with Sample Labels in Appendix L of this part. The text and lines shall be all black or one color type, printed on a white or other neutral contrasting background whenever practical.

(i) The Lighting Facts information shall be set off in a box by use of hairlines and shall be all black or one color type, printed on a white or other neutral contrasting background whenever practical.

(ii) All information within the Lighting Facts label shall utilize:

(A) Arial or an equivalent type style;

(B) Upper and lower case letters;

(C) Leading as indicated in the Prototype Labels in Appendix L of this part;

(D) Letters that never touch;

(E) The box and hairlines separating information as illustrated in the Prototype Labels in appendix L of this part; and

(F) The minimum font sizes and line thicknesses as illustrated in Prototype Labels in Appendix L of this part.

(iii) For small package labels covered by (c)(2)(iv) of this section, the words “Lighting Facts see back” shall appear on the primary display panel in a size and format specified in appendix L of this part.

(4) *Bilingual labels.* The information required by paragraph (c) of this section may be presented in a second language either by using separate labels for each language or in a bilingual label with the English text in the format required by this section immediately followed by the text in the

second language. All required information must be included in both languages. Numeric characters that are identical in both languages need not be repeated.

(d) For lamps that do not meet the definition of general service lamp or specialty consumer lamp, manufacturers and private labelers have the discretion to label with the Lighting Facts label as long as they comply with all requirements applicable to specialty consumer lamps in this part.

* * * * *

(f) * * *

(1) The required disclosures of any covered product that is a general service lamp or specialty consumer lamp shall be measured at 120 volts, regardless of the lamp's design voltage. If a lamp's design voltage is 125 volts or 130 volts, the disclosures of the wattage, light output, energy cost, and life ratings shall in each instance be:

* * * * *

(4) For any covered product that is a general service lamp or specialty consumer lamp and operates at discrete, multiple light levels (*e.g.*, 800, 1600, and 2500 lumens), the light output, energy cost, and wattage disclosures required by this section must be provided at each of the lamp's levels of light output and the lamp's life provided on the basis of the shortest lived operating mode. The multiple numbers shall be separated by a "/" (*e.g.*, 800/1600/2500 lumens) if they appear on the same line on the label.

(5) A manufacturer or private labeler who distributes general service fluorescent lamps, general service lamps, or specialty consumer lamp without labels attached to the lamps or without labels on individual retail-sale packaging for one or more lamps may meet the package disclosure requirements of this section by making the required disclosures, in the manner and form required

by those paragraphs, on the bulk shipping cartons that are to be used to display the lamps for retail sale.

(6) Any manufacturer or private labeler who makes any representation, other than those required by this section, on a package of any covered product that is a general service fluorescent lamp, general service lamp, or specialty consumer lamp regarding the cost of operation or life of such lamp shall clearly and conspicuously disclose in close proximity to such representation the assumptions upon which it is based, including, e.g., purchase price, unit cost of electricity, hours of use, patterns of use. If those assumptions differ from those required for the cost and life information on the Lighting Facts label (11 cents per kWh and 3 hours per day), the manufacturer or private labeler must also disclose, with equal clarity and conspicuousness and in close proximity to, the same representation based on the assumptions for cost and life required on the Lighting Facts label.

* * * * *

7. In § 305.20, revise paragraphs (a)(1)(i) and (a)(1)(ii) introductory text to read as follows:

§ 305.20 Paper catalogs and Web sites.

(a) * * *

(1) *Content*—(i) *Products required to bear EnergyGuide or Lighting Facts labels.* All Web sites advertising covered refrigerators, refrigerator-freezers, freezers, room air conditioners, clothes washers, dishwashers, ceiling fans, pool heaters, central air conditioners, heat pumps, furnaces, general service lamps, specialty consumer lamps (for products offered for sale after May 2, 2018), and televisions must display, for each model, a recognizable and legible image of the label required for that product by this part. The Web site may hyperlink to the image of the label using

the sample EnergyGuide and Lighting Facts icons depicted in appendix L of this part. The Web site must hyperlink the image in a way that does not require consumers to save the hyperlinked image in order to view it.

(ii) *Products not required to bear EnergyGuide or Lighting Facts labels.* All websites advertising covered showerheads, faucets, water closets, urinals, general service fluorescent lamps, fluorescent lamp ballasts, and metal halide lamp fixtures must include the following disclosures for each covered product. For plumbing products, the Web site may hyperlink to the disclosures using a prominent link labeled “Water Usage” or a similar description which facilitates the disclosure of the covered product’s rated water usage.

* * * * *

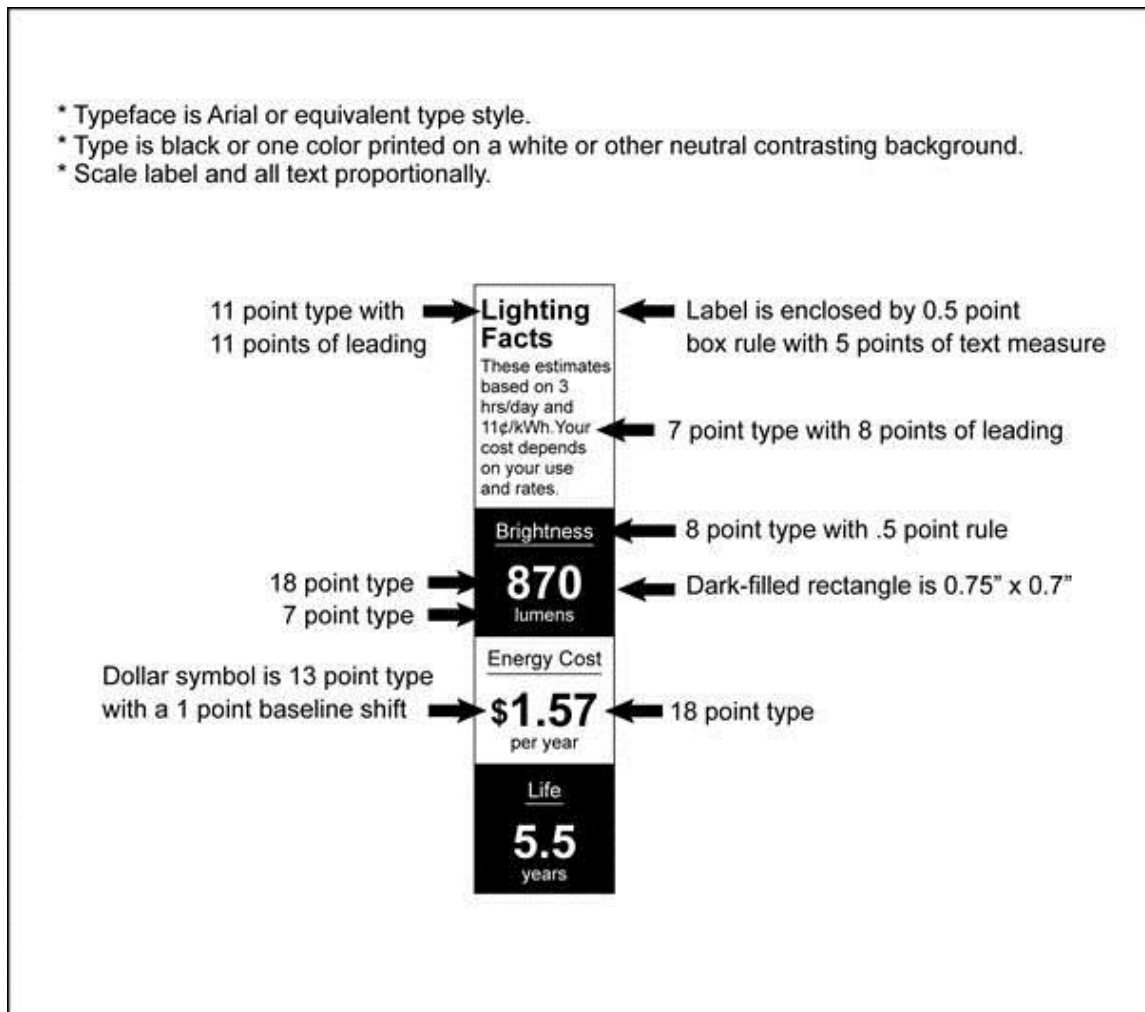
8. In Appendix L, remove Sample Labels 1 and 2, redesignate Sample Labels 1A and 2A as Samples Labels 1 and 2, respectively, and add Prototype Label 7A and Sample Labels 13C and 13D.

The additions read as follows:

Appendix L to Part 305—Sample Labels

* * * * *

- * Typeface is Arial or equivalent type style.
- * Type is black or one color printed on a white or other neutral contrasting background.
- * Scale label and all text proportionally.



Prototype Label 7A

Lighting Facts Label Alternative for Specialty Consumer Lamps

* * * * *

Lighting Facts		
These estimates based on 3 hrs/day and 11¢/kWh. Your cost depends on your use and rates.		
Brightness	Energy Cost	Life
870 lumens	\$1.57 per year	5.5 years

Lighting Facts
These estimates based on 3 hrs/day and 11¢/kWh. Your cost depends on your use and rates.
Brightness
870 lumens
Energy Cost
\$1.57 per year
Life
5.5 years

Sample Label 13C

Lighting Facts Label Alternative for Specialty Consumer Lamps



Sample Label 13D

Icon for Specialty Consumer Lamp Packages that Meet the Requirements of section
305.15(c)(2)(iv)

* * * * *

By direction of the Commission.

Donald S. Clark
Secretary.

[FR Doc. 2015-27772 Filed: 10/30/2015 8:45 am; Publication Date: 11/2/2015]